



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

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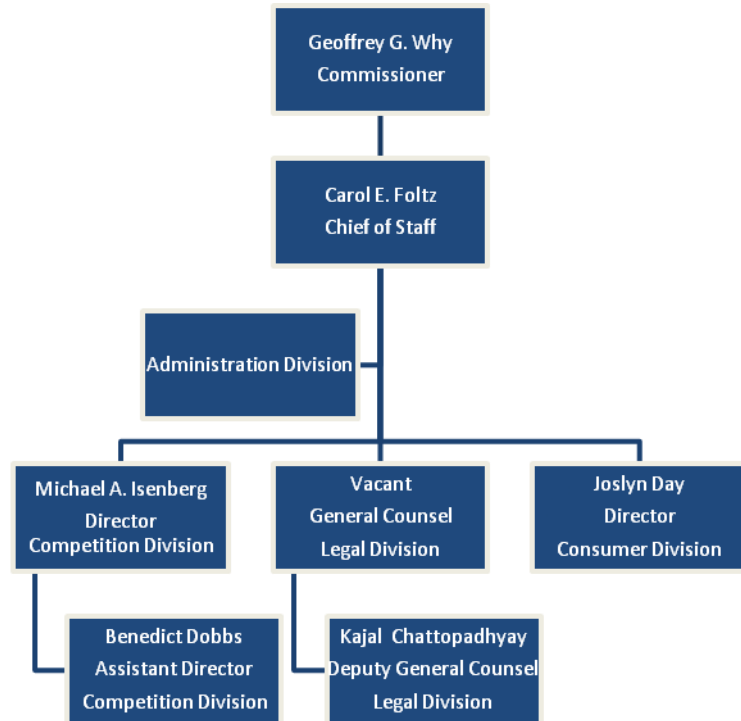
**Massachusetts Department of Telecommunications & Cable
2009 Annual Report**

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Organizational Chart

Department of Telecommunications and Cable December 31, 2009



Background

The Department of Telecommunications and Cable ("Department") is funded through an annual assessment by telecommunications and cable companies as authorized by the annual General Appropriations Act, line item 7006-0071 and pursuant to Chapter 25C, section 7 of the Massachusetts General Laws ("M.G.L.") and Article 87 of the Acts of 2007. The Department's operating budget for FY2009 was \$2.51 million. Any unexpended balances are credited to the following year's industry assessment.

The telecommunications industry over which the Department has jurisdiction is made up of common carriers, including local exchange carriers, interexchange carriers, operator service providers, pay-telephone companies, and providers of certain emerging voice services, such as facilities-based interconnected voice over internet protocol ("VoIP") services. The cable industry in Massachusetts is comprised of 10 cable television providers serving over 2.1 million video subscribers in 308 of the Commonwealth's 351 cities and towns.

The Department's mission is to: (1) regulate the telecommunications and cable industries in accordance with the statutory obligations imposed by the Commonwealth of Massachusetts and the federal government; (2) ensure that consumers receive high quality communications at just and reasonable rates; (3) promote sustainable competition which will increase consumer welfare for all Massachusetts residents; (4) maintain and enforce consumer protections, consistent with the public interest, particularly where market forces alone are not sufficient to do so, including investigating and responding to inquiries and complaints from consumers and carriers; and (5) provide expert input into the development of telecommunications- and cable-related policies for the State.

The Department's general responsibilities are:

Promote Competition

- Revise existing policies and develop new policies in response to new technologies and market conditions;
- Collect and compile data on the status of competition in the communications industries in Massachusetts, and prepare summary reports of the findings;
- Develop and implement policies that promote competition in areas of the state where it lags;
- Develop and enforce policies to promote wholesale and retail competition;
- Implement competition-related rule changes consistent with state and federal law;

Protect Consumers

- Establish and enforce basic consumer protections (e.g., enforce the Department's billing and termination requirements, including elderly disconnect rules, and chat line blocking rules);
- In coordination with the State 911 Department, ensure access to quality telecommunications services for persons with disabilities;
- Monitor and enforce low-income discount programs (Lifeline/Linkup) and conduct outreach to promote subscribership;
- Enforce consumer privacy laws;
- Investigate the need for "public interest" payphones, and ensure that payphone providers comply with labeling and rate information requirements to prevent price gouging;
- Adjudicate "slamming" complaints, complaints between small and medium-sized business customers and carriers, and service quality complaints from various customer groups and municipalities;

Information/Advocacy Role

- Analyze major federal legislative and regulatory decisions to evaluate their impact on state regulation of the telecommunications industry, and when appropriate, advocate on behalf of Massachusetts consumers before the Federal Communications Commission ("FCC") and Congress;
- Explain Department regulations and policies, and provide other information as requested to consumers, carriers, public officials, the Legislature, the Administration, and others;
- Monitor and evaluate proposed state legislation, and provide recommendations to the Administration;
- Participate in regional and national regulatory associations to ensure that Massachusetts consumer interests are represented; and
- Comply with periodic or annual FCC reporting requirements.

Telecommunications Regulation

Regulatory Framework

The federal Telecommunications Act of 1996 (“Telecom Act”) led to major changes in the telecommunications industry and how it is regulated. Foremost among the changes was the growth of competition in all markets, particularly the local exchange market. The dramatic increase in competition, spurred in large part by technological innovation, has required that the Department adjust its regulations to reflect changes in market conditions and relax its regulations where market forces are sufficient to protect consumer interests, thereby ensuring that the Department continues to promote competition. At the same time, however, where market forces are not sufficient to safeguard consumer interests, the Department has continued to enforce necessary protections.

The Department has jurisdiction over telecommunications services that originate and terminate within or between each of Massachusetts’ two federally-designated “Local Access and Transport Areas” (“LATAs”).¹ The FCC generally regulates interstate and international services.

Department Responsibilities

The Department’s primary telecommunications-related responsibilities are:

Wholesale Regulation

- Set rates at which carriers can lease parts of each other’s networks - this applies in particular to incumbent local exchange carriers’ networks. In Massachusetts, the state’s primary incumbent local exchange carrier is Verizon New England.
- Establish the terms and conditions under which facilities-based carriers interconnect their networks, exchange traffic and generally conduct their business relationships;
- Resolve disputes between competing carriers over wholesale rates and service issues;
- Establish and enforce wholesale service quality standards for Verizon so that it does not discriminate against competing carriers in providing wholesale services;
- Set the rates at which competitors can resell Verizon’s retail services; and
- Ensure that competing carriers do not create barriers to consumer choice (e.g., enforce number porting requirements).

¹ The Western Massachusetts LATA consists of the 413 area code; all other area codes in the state fall under the Eastern Massachusetts LATA.

- Enforce phone number allocation rules (i.e., monitor use of telephone numbers by carriers and promote number conservation to ensure an adequate supply of telephone numbers for the industry and to prevent the need for new area codes); and
- In coordination with the Department of Public Utilities, ensure access to rights-of-ways for all carriers by establishing and enforcing rules concerning the rates and access to utility poles and conduits.

Retail Regulation

- Develop and enforce policies to promote retail competition, including policies that relax regulation where market forces are sufficient to protect consumer interests;
- Regulate certain Verizon retail services for which it still retains market power;
- Regulate rates, services, and practices of four small rural incumbent local phone companies that are considered to have market power in their service territories;
- Set rates and monitor service quality for inmate calling services, which are considered “monopoly” services; and
- Ensure that reasonable service quality is provided by all carriers.

Public Safety/Network Reliability Regulation

- Help to ensure adequate funding of the E-911 network (i.e., oversee the cost of the network and establish the retail surcharge to fund the network) and to provide oversight of the State 911 Department’s expenditures, pursuant to Chapter 223 of the Acts of 2008;
- Facilitate quick resolution of wholesale and retail service outages by working closely with carriers;
- Enforce Verizon’s major extended service outage rules, which are intended to address prolonged outages affecting 200 or more customers;
- Periodically review for adequacy the carrier network reliability plans; and
- Enforce Verizon’s central office collocations security rules.

Market Entry and Exit Regulation

- Review new registrations from companies seeking to provide telecommunications services in Massachusetts;

- Review individual tariff filings that would implement new service offerings or change the rates, terms or conditions of existing service offerings;
- Enforce entry requirements to ensure that no carriers are operating illegally in Massachusetts;
- Facilitate a smooth, orderly process when carriers discontinue services or exit the market entirely to prevent disruption of service to customers;
- Approve transfers of ownership and control for certain carriers; and
- Review and approve applications for “eligible telecommunications carrier” (“ETC”) status (ETCs must meet certain service obligations to be eligible to receive federal universal service funds).

Retail Services – Market Entry

To reduce barriers to market entry and encourage competition for telecommunications service in Massachusetts, the Department has a streamlined registration process for companies wishing to do business as carriers within the state. Previously, the Department conducted an investigation into the financial, managerial, and technical abilities of a carrier to offer service. The Department permits carriers to offer service based simply on the submission of a Statement of Business Operations and a tariff. The streamlined entry process permits the Department to devote greater resources and staff time to other responsibilities.

Wholesale Services – Market Entry

Apart from building their own facilities to serve customers, carriers who wish to compete in the retail telecommunications market have two modes of entry available to them. One of these is to lease unbundled network elements from the “incumbent” local exchange carrier (“ILEC”)² or another carrier and provide service over this leased network. Verizon is the ILEC for all but four towns in Massachusetts. The Department has authority over Verizon’s wholesale provision of unbundled network elements, ensures that they are provided in a non-discriminatory manner, and regulates the rates at which they are leased.

The other way a carrier can enter the market is to purchase a service from another carrier (usually Verizon) at a predetermined wholesale discount rate, then brand the service with its own name and resell it. The Department develops the wholesale discount rate for Verizon pursuant to FCC methodology.

² The ILEC is the entity that owned the network prior to the introduction of competition.

Payphone Providers

In addition to Verizon, many companies own and operate payphones in Massachusetts. In a 1986 Order, the Department held that all payphones must have labels clearly identifying the owner/operator of the phone, and must provide free access to 911 and directory assistance. The Department ensures that Verizon provides the lines necessary to provide payphone service on a non-discriminatory basis to all companies seeking to offer the service. During 2009, the Department registered 1 new payphone provider. Payphone providers are not required to file tariffs.

Enforcement of Service Quality

Since the passage of the Telecom Act, the Massachusetts telecommunications market has experienced competitive growth in all sectors, including residential, business, urban and rural. In 1995, the Department adopted a Service Quality Plan for Verizon, consisting of twelve service measures in the categories of Installation Service, Maintenance Service, and Service Response. Verizon reports its performance on each of the measures to the Department on a monthly basis. If Verizon's performance falls below the Department's threshold, Verizon pays a penalty in the form of a refund to all residential and business customers. By continuing to monitor Verizon's quality of service, the Department ensures that Verizon, as the dominant local exchange carrier in Massachusetts, allocates sufficient resources for the maintenance of quality service to all customers, regardless of the level of competition the company faces in a particular market. Verizon's service quality is also evaluated at the local level when the Department receives a formal complaint from city or town officials or customers. During 2009, the Department opened a proceeding to investigate Verizon's service quality in Western Massachusetts.

2009 Telecommunications-Related Accomplishments

During 2009, the Department provided continued support to the development of Governor Patrick's Broadband Initiative. This support included assistance with the Massachusetts Broadband Institute ("MBI") and its initial work to develop a solicitation for proposals from private companies to bring broadband to all unserved and underserved areas of the state through the \$40 million Massachusetts Broadband Incentive Fund. In addition, the Department provided support and guidance to MBI in its mapping projects, FCC comments, and grant proposals.

Cable Regulation

Regulatory Framework

What began 36 years ago -- through the establishment of the Massachusetts Community Antenna Television Commission -- as a service designed mainly to deliver off-the-air broadcast signals to rural and mountainous areas has become a \$1.9 billion industry in Massachusetts. While some households rely on antenna reception, the principal alternative to cable television has been satellite television. However, in recent years, new entrants have emerged in the marketplace, such as competitive overbuilders and municipally-owned companies. Principal among these competitive providers are telephone companies that have begun offering video service, as well as high-speed internet service, in competition with incumbent cable operators.

Cable television is regulated on the local, state, and federal level. The Department regulates cable services principally pursuant to its enabling legislation, M.G.L. c. 166A, and implementing regulations at 207 C.M.R. § 1.00 et seq.

Department Responsibilities

The Department's primary cable-related responsibilities are:

- Oversight of cable television franchising, franchise renewal, and the transfer of cable franchises within the Commonwealth;
- Establish basic service tier programming, equipment and installation rates for communities in Massachusetts that have requested rate regulation;
- Enforce consumer protection standards; and
- Collect, compile, and maintain statistical data from cable providers on, among other things, consumer complaints, rates, terms and conditions, market share, and financial performance.

Oversight of Municipal Cable Franchising

In Massachusetts, local municipalities act as the issuing authorities and negotiate and grant cable licenses, while the Department retains oversight authority in licensing matters. The Department conducts an extensive educational program for communities involved in the licensing process, regarding the applicable substantive and procedural requirements at the local, state, and federal levels. When licensing disputes arise at the local level, the Department serves as the appellate body.

During the past few years, the issue of cable franchising took center stage before Congress, the FCC, and a number of state legislative bodies. While Congress contemplated sweeping video franchising reform, the FCC commenced a rulemaking proceeding to address the issue. No federal legislation was enacted, but the FCC did vote, on December 20, 2006, to impose a 90-day review period on future competitive license applications. In 2006, the then Cable Division of the Department of Telecommunications and Energy (“DTE”), the Department’s predecessor agency, commenced a rulemaking proceeding, upon petition of Verizon Communications, to determine whether the franchise process should be altered in Massachusetts. While that case was pending, Verizon-sponsored legislation was introduced that would have changed the state law to allow for the Department to grant video providers a statewide franchise. As a result, in 2008, the Department delayed issuance of its rulemaking decision pending the outcome of that legislation. In 2009, a final decision remained pending.

Rate Regulation

In October 1992, Congress passed the Cable Television Consumer Protection and Competition Act, which provided for the regulation of cable television rates. Pursuant to this Act and M.G.L. c. 166A, the Department regulates subscribers’ rates for basic service tier programming, equipment, and installation in those Massachusetts communities that: (1) have requested rate regulation; and (2) do not have effective competition, as determined by the FCC. The Department reviews the proposed basic service tier rates to determine whether such rates are just and reasonable and in compliance with applicable federal law. Pursuant to federal law, rates for expanded cable or premium services are not regulated.

In 2009, the Department reviewed basic service tier programming rates, equipment, and installation rates in most of the 209 rate-regulated communities of Massachusetts. The Department issued several rate orders, with respect to basic service tier programming, installation, and equipment rates applicable in these municipalities.

Consumer Protection and Education

The Department investigates and resolves individual consumer complaints, either by informal negotiation between the consumer and the cable operator or by formal adjudicatory proceedings. The Department also tracks patterns of complaints in order to identify and resolve more widespread problems. In 2009, the Department monitored analog migration developments by cable companies as well as Digital TV (“DTV”) transition issues.

The Department has regulations designed to afford consumer protections to cable subscribers, particularly with respect to billing and termination of service.

The Department requires each cable operator to make annual filings to ensure compliance with these consumer protection regulations. Through dedicated telephone lines, published consumer information, fact sheets, and a consumer-friendly website, the Department serves as a source of information for consumers seeking to understand the options available to them, particularly as competition among cable operators increases across the Commonwealth.

2009 Cable-Related Accomplishments

Cable-related accomplishments in calendar year 2009 include:

- Basic Tier Programming and Equipment Rates

As part of its regular review, the Department reviewed basic service tier programming and equipment rates for most rate regulated Massachusetts communities in 2009. These reviews resulted in refunds or credits to Massachusetts subscribers exceeding \$203,000.00.

- The Department released a decision involving the Cable Form 500, (D.T.C. 08-12). Verizon, the state's primary ILEC, is also a competitive cable provider within the Commonwealth. Verizon had requested amendment of the Department's Cable Form 500 for all cable providers, whereby subscribership and complaint data at the municipal level would no longer be reported. The Department denied Verizon's request.
- Initial Licensing by Competitive Provider

As of the close of 2009, Verizon held a total of 107 franchises within Massachusetts including 17 awarded in 2009, and is pursuing franchises in additional communities. Verizon currently holds licenses in the communities of Abington, Acton, Andover, Arlington, Ashland, Bedford, Bellingham, Belmont, Billerica, Boxborough, Boxford, Braintree, Burlington, Canton, Chelmsford, Cohasset, Danvers, Dedham, Dover, Dunstable, Easton, Fitchburg, Framingham, Franklin, Georgetown, Grafton, Groton, Hamilton, Hanover, Hingham, Holliston, Hopkinton, Hudson, Hull, Ipswich, Kingston, Lakeville, Lawrence, Leominster, Lexington, Lincoln, Littleton, Lynn, Lynnfield, Malden, Mansfield, Marblehead, Marion, Marlborough, Marshfield, Mattapoisett, Maynard, Medfield, Medway, Melrose, Mendon, Methuen, Middleborough, Middleton, Milford, Millbury, Nahant, Natick, Needham, Newton, Norfolk, North Andover, North Attleboro, Northborough, North Reading, Norwell, Norwood, Plymouth, Reading, Rochester, Rockland, Rowley, Sherborn, Southborough, Stoneham, Stowe, Stoughton, Sudbury, Sutton, Swampscott, Taunton, Tewksbury, Topsfield, Tyngsborough, Wakefield, Walpole, Waltham, Wareham, Wayland, Wellesley, Wenham, Westford,

West Newbury, Westborough, Weston, Westwood, Wilmington, Winchester, Woburn, and Wrentham.

Administration Division

Overview

The Administration Division provides administrative support to the Department.

Division Responsibilities

Finance

The Division handles budget preparation and controls, purchasing, accounts receivable and accounts payable, payroll, and other administrative financial services. The Department's budget for Fiscal Year 2009 was \$2.51 million. Revenue collected during that same period was \$4.5 million of which \$1.75 million was returned to the General Fund from revenue sources that include telecommunications and cable filing fees.

Human Resources

In conjunction with the Office of Consumer Affairs and Business Regulation, the Division is responsible for payroll actions and human resource management.

Legal Support

The Division is also responsible for publishing notices of all Department public hearings. In 2009, the Department conducted a total of 12 hearings. The Division also processes all docket filings and Orders issued by the Department including management of record retention. Staff processed 10 decisions to multiple parties and intervenors in the Department's dockets in 2009. Additionally, staff responded to hundreds of requests for information regarding docketed matters.

Information Technology

Division staff oversees the operation of the information technology ("IT") systems, the telephone system, and the website. IT staff is shared with the Office of Consumer Affairs and Business Regulation. In 2009, IT staff completed infrastructure upgrades to the website and developed databases that facilitate management and tracking of tariffs and annual returns.

Communications

Division staff drafts consumer advisories on topical issues and develops educational materials for public dissemination. Staff also responds to substantive consumer inquiries.

Competition Division

Overview

Pursuant to Chapter 19 of the Acts of 2007, the Department's predecessor agency, the Department of Telecommunications and Energy, ceased to exist. Jurisdiction over telecommunications and cable matters was placed in the newly-established Department. All telecommunications and cable authority and cases were initially transferred to the Department's Telecommunications and Cable Television Divisions, respectively.³ Shortly thereafter, in order to increase efficiencies by taking advantage of synergies created by convergence in these industries, the Department merged the separate Telecommunications and Cable Divisions to form the Competition Division.

The Competition Division provides technical and analytical support to the Commissioner of the Department, as well as to the Department's Legal and Consumer Divisions and other Administration officials, in the regulation of the telecommunications and cable industries in Massachusetts.

The Competition Division also serves as the Department's primary liaison with the Legislature, particularly the Joint Committee on Telecommunications, Utilities and Energy.

Division Responsibilities

Market Monitoring and Reporting Function: Massachusetts Competition Report

The evolution of the telecommunications and cable industries in Massachusetts has resulted in many new telecommunications service providers, new technologies, such as fixed VoIP telephone service, and a plethora of new service offerings. In addition, the competitive landscape is constantly changing, with new types of competitors and individual companies taking on a greater or lesser role in the marketplace each year. Because of the changing nature of the

³ In 1971, the Legislature established the Massachusetts Community Antenna Television Commission ("Cable Commission"). In 1997, the Cable Commission was merged into the Department of Telecommunications and Energy as the Cable Television Division.

telecommunications and cable industries, the Competition Division analyzes new technologies and market developments in order to determine their impact on customers and the competitive marketplace. As the culmination of a new Market Monitoring and Reporting Function established in 2007, the Competition Division, with assistance from the Legal, Consumer, and Administration Divisions, has completed a comprehensive Competition Report that examines the state of competition from 2005 through 2008 in the Commonwealth. This Competition Report, which includes an Executive Summary, a main Report, and appendices, will be issued February 12, 2010. It is provided as an attachment to the Department's Annual Report to the Legislator, and it is intended to inform the Legislature about developments in the state's communications markets over the past several years.

Development of Policies that Promote Sustainable Competition and Conform the Level and Type of Regulation to Market Conditions

In conjunction with the Legal Division, Competition Division staff conducts formal and informal policy investigations to ensure that consumers of telecommunications and cable services continue to reap the benefits of competition and that such competition accrues to all residents of Massachusetts. In addition, Competition Division staff safeguards consumers by implementing new regulatory policies to ensure that the rates, terms, and conditions of telecommunications and cable services are just and reasonable, where market forces alone cannot do so.

Analysis and Implementation of Major Federal Regulatory Changes

Decisions of the FCC, Congress, and state and federal courts affect the structure of the telecommunications and cable industries and the Department's authority to regulate those services. Competition Division staff monitor large volumes of relevant case law from other agencies and jurisdictions to keep abreast of major issues that may influence the provision of telecommunications and cable services within Massachusetts. For instance, Competition Division staff devoted substantial time in 2009 to monitoring actions related to the broadband provisions of the American Recovery and Reinvestment Act ("Recovery Act") signed into law by President Obama in February 2009. One provision of the Recovery Act requires the FCC to issue a National Broadband Plan by February 17, 2010. Reports indicate that the FCC's Plan will have far-reaching consequences for American consumers and the communications industries going forward.

The Competition Division also monitors all new telecommunications-, cable-, and broadband-related dockets at the FCC to determine whether to participate in those proceedings as an advocate on behalf of Massachusetts consumers and/or to keep the Commissioner informed of the impact of those proceedings on

Department policies. In 2009, the Competition Division actively monitored over 30 FCC proceedings and submitted comments and ex parte filings in several proceedings of particular importance to Massachusetts consumers. For instance, on behalf of the Department, Competition Division staff drafted FCC comments jointly with the Massachusetts Office of the Attorney General. These comments responded to a D.C. Circuit Court of Appeals remand of an FCC order denying a Verizon request for forbearance from certain of its ILEC unbundling responsibilities within the Commonwealth, a reversal which could negatively affect competition and consumer prices within the Massachusetts telecommunications market. In addition, Division staff drafted several series of comments relating to FCC inquiries in its broadband proceedings. Certain of these comments were filed on behalf of the Department jointly with the Massachusetts Broadband Institute and the Vermont Department of Public Service. Further, consistent with the Department's position on jurisdictional and regulatory authority over fixed VoIP telephone service; the Department submitted several filings to the FCC on this subject. Fixed VoIP is a telephone service increasingly being offered by companies throughout Massachusetts, including Comcast and Verizon. The Department further requested that the FCC reaffirm state regulatory authority over fixed VoIP services and suggested that, if the FCC considers it necessary to determine a final regulatory classification of fixed VoIP for purposes of federal law, then the service should be declared a telecommunications service subject to state authority.

Review of New Registrations and of Original and Amended Tariff Filings

Companies wishing to do business and provide telecommunications services in Massachusetts must file a Statement of Business Operations and a tariff with the Department. The statement includes a general description of the services to be offered by the carrier; contact information for customers who need to reach the carrier with questions or complaints; and a statement that the company has made all appropriate federal and state income tax filings and paid all income taxes. During 2009, the Competition Division handled filings from 25 new carriers.

In 2009, the Competition Division also reviewed an average of approximately 32 tariff filings per month, including new tariffs and amendments to existing tariffs. Competitive carriers are free to determine prices and service offerings based on what the market will bear ("market-based pricing"). The Competition Division reviews competitive carriers' tariffs to make sure that they do not contain any terms or provisions that are in violation of Department policy (e.g., a carrier cannot offer service on the condition that a customer agrees not to contest any charges), but otherwise generally allows new tariffs to become effective as filed. Because Verizon is the "dominant" incumbent local exchange carrier, its tariffs

receive greater scrutiny than those of competitive local exchange carriers (“CLECs”), although most of Verizon’s rates are subject to market-based pricing.

In mid-2007, the Department established an internal measurement to gauge its responsiveness to carriers in the tariff review process. The “tariff review metric” requires that the Department notify carriers within 14 days of receipt of a tariff filing that the filing has been received and is being processed. This performance metric is tracked internally on a monthly basis and reported quarterly in the Office of Consumer Affairs and Business Regulation’s “Consumer Report Card.” The Department maintained a 100% tariff review metric in 2009.

Enforcement - General

The Competition Division, in cooperation with the Legal Division, enforces a wide variety of laws, regulations, and policies. In 2009, Competition Division staff continued to assist Legal Division staff as technical analysts in Department enforcement proceedings, both formal and informal. More specifically, the Competition Division continued to ensure that telecommunications and cable providers were complying with state statutes, rules, Department orders, and all other regulatory requirements. For example, the Competition Division conducted enforcement action against carriers operating without Department approval. The Department’s methods for ensuring compliance include mass mailings notifying the industry of Department rules and regulations; issuing Notices of Probable Violation (“NOPVs”); opening investigations; issuing Orders to cease and desist; and referring violators to the Attorney General’s Office for prosecution. In addition, the Competition Division issued several letters to cable providers offering fixed VoIP services to reaffirm the Department’s policy that fixed VoIP providers are required to submit to Department jurisdiction, by filing a Statement of Business Operations and tariff. Competition Division staff provided support to the Commissioner and the Legal Division during ongoing discussions and monitoring of this issue.

Consumer Education and Public Information

The Competition Division devotes substantial staff time to explaining the Department’s regulations and policies to potential and existing providers of telecommunications and cable services, local and state officials, state and federal legislators, other Massachusetts agencies, the FCC and other state public utility commissions, and various other constituencies. Staff also devotes significant time to consumer inquiries and refers consumers to the Consumer Division for additional assistance. From time to time, the Department requires telecommunications carriers to develop customer education materials explaining major changes in the provision of services. The Competition Division reviews these education materials for technical accuracy. As needed, staff develops

educational materials in response to industry changes, Consumer Division requests, or Department Orders.

Legal Division

Overview

The Legal Division staff serves as the chief legal and policy advisor to the Commission and provides legal support to all divisions of the Department.

Division Responsibilities

Formal Adjudication

The Legal Division's primary duty is presiding over adjudicatory proceedings conducted under the Massachusetts Administrative Procedures Act (M.G.L. c. 30A) and the Department's procedural regulations (220 C.M.R. § 1.00 et seq.). During 2009, the Legal Division participated in the issuance of 10 Orders. A list of the Orders issued is attached at Appendix A. Adjudications are the formal determination of parties' rights through a quasi-judicial process. All parties – both the party filing the action and any intervenors – are entitled to due process safeguards, meaning that the parties are entitled to adequate notice and the opportunity to be heard. Parties to the action have the right to present evidence, cross-examine witnesses, and receive a written decision from the Department. Pursuant to M.G.L. c. 25C, § 4, the Commissioner of the Department may designate an employee of the Department to act as "Presiding Officer" at Department hearings. Adjudicatory proceedings vary in complexity and may be divided into categories that include:

- Service quality issues;
- Ratemaking including cable rate and telecommunication tariff orders;
- "Slamming" (unauthorized switch of a consumer's telecommunications service);
- Interconnection disputes between telecommunication carriers; and
- Certification of telecommunications carriers to do business within the Commonwealth.

In conducting a formal adjudicatory proceeding, the Department generally holds two types of hearings: (1) a public hearing, and (2) an evidentiary hearing. Public hearings are publicized throughout the provider's service territory. In certain types of cases, public hearings are conducted in a provider's service territory. Public hearings are transcribed by a stenographer. If conducted in a provider's

service territory, public hearings are typically conducted during the evening in an easily accessible public building such as the Town Hall, and are overseen by a Presiding Officer. The public hearings afford local consumers the opportunity to learn more about a rate request, offer their input about the pending case, and comment on the practices of the provider. Residential and business customers are a valuable source of information to the Department in developing a case record.

Evidentiary hearings are conducted in a courtroom setting in the Department's Boston offices. These proceedings are also transcribed by a stenographer. A hearing officer presides over hearings, with the active participation of the Department's technical staff. The technical and legal staff participates by questioning witnesses to ensure that the record is accurate and complete.

While the adjudicatory process does not require adherence to all formal rules of evidence, the evidentiary hearing process follows many rules of civil procedure, and parties are typically represented by counsel.

Evidentiary hearings afford intervenors the opportunity to question witnesses. In many cases, the Attorney General of the Commonwealth is an intervenor. Other intervenors may include public interest organizations and local consumer, business, or neighborhood groups. Sometimes intervenors put on a direct case with witnesses of their own. Based on the evidence in the record, the Department issues a Final Order at the conclusion of each adjudicatory proceeding. Pursuant to M.G.L. c. 25, § 5, the Department's Final Order is appealable directly to the Massachusetts Supreme Judicial Court without intermediate appellate review. In certain circumstances, Department Orders may also be appealed to the Federal District Court or the FCC.

Other Types of Adjudication

Requests for Advisory Ruling

The Department is sometimes called upon to issue advisory rulings with respect to the applicability of any statute or regulation enforced or administered by the Department. The Department has discretion to decline a request for an advisory ruling. See M.G.L. c. 30A, § 8; 220 C.M.R. § 2.08.44.

Rulemakings

The Department conducts rulemakings pursuant to M.G.L. c. 30A, §§ 4-10 and 220 C.M.R. § 2.00, to adopt, amend or repeal regulations pertaining to the activities of all industries the Department is charged by statute with regulating. A rulemaking proceeding may involve simple procedural regulations or may address complex regulatory issues. The Department is required to provide public

notice of a proposed rulemaking and to allow an opportunity for public comment. After consideration of the public comment, the Department may issue final regulations. Any final regulation must be published in the Code of Massachusetts Regulations.

Consumer Division

Overview

The Consumer Division's primary responsibilities include enforcing and monitoring compliance with Massachusetts laws and Department regulations and policies to protect consumers of telecommunications and cable services. Hundreds of companies fall within the scope of the Consumer Division's regulatory authority, with the largest number in the telecommunications industry.

Prior to September 2009, the Consumer Division also handled energy-related issues on behalf of the Department of Public Utilities ("DPU"). However, in September 2009, the Division ceased its handling of those issues, which are now referred to the DPU. See Attachment B for a breakdown of the Consumer Division's telecommunications and cable statistics and Attachment C for the Division's energy-related statistics.

Division Responsibilities

Respond to Consumer Inquiries

The Consumer Division conducts complaint investigations, responds to inquiries, and participates in the critical role of informing and educating consumers about various technological changes affecting their telecommunications and cable services. The Consumer Division's most important duty is to respond to the roughly 200 to 300 contacts it receives daily concerning regulated companies. Consumers may contact the Division by telephone, mail, email, and fax or by visiting the office, although the vast majority of consumer contacts are made by telephone. Contacts to the Consumer Division are further categorized as either inquiries or referrals, for which we provide information or complaints which we investigate as cases that require direct contact with consumers' service provider.

The Consumer Division operates a call management telephone system allowing consumers to receive personal and prompt attention by staff to address inquiries and complaints, while also permitting for the option of automated voice response assistance to those consumers who initially wish to speak directly with their company. The call management system assists with making Consumer Division specialists more readily available to those callers requiring Consumer Division

expertise. It also allows for a menu recorded in Spanish for those callers that wish to speak to a representative in their native language.

The Consumer Division receives a number of contacts that the Division classifies as “unregulated matters.” These contacts typically consist of miscellaneous issues that are either unassociated with a particular company or involve non-regulated issues or entities outside of the Division’s jurisdiction. Examples of such “unregulated matters” include contacts relating to wireless, satellite, internet, propane gas, and oil companies and/or services.

Investigate and Resolve Consumer Complaints

The majority of complaints received in the Consumer Division concern billing disputes, or poor quality of service allegations. In those cases in which the company is found to be at fault, the Consumer Division will order the company to correct the problem and to make any necessary refunds.

Every complaint opened by the Consumer Division must be resolved before it can be closed. If the residential consumer or the utility company is not satisfied with the investigator’s resolution of a complaint either party may request an informal hearing within the Consumer Division. Parties dissatisfied with the informal written decision may request a formal adjudicatory hearing conducted by a hearing officer in the Department’s Legal Division. The Consumer Division conducted 1 telecommunications and cable hearing and 7 energy related hearings in 2009.

The unauthorized switching of a consumer’s telephone service provider is known as “slamming” and is a violation of the law. Companies that engage in slamming may be subject to a fine. The Consumer Division enforces both federal and state laws which prohibit “slamming”. If the Department determines that an unauthorized switch has occurred, consumers will receive a refund of any unauthorized charges that they paid. Under Massachusetts law, consumers must bring telephone service slamming complaints within 90 days.

Advise the Department

The Consumer Division alerts the Department to important consumer issues including significant complaint trends and new company practices which may impact consumers. Recent complaints about deceptive marketing and advertising practices of promotional offers have caused the Department to examine more closely the full disclosure and notice requirements. Also, the Division evaluates existing billing and termination rules for residential telephone consumers to better assist with customer service standards for telecommunications, cable, and emerging technologies.

Review Bills and Notices

The Consumer Division reviews certain telecommunication and cable company billing material and customer notices to ensure that they provide consumers with clear and accurate information.

Provide Consumer Education

Due to the federally mandated switch from analog to digital television (or more commonly known as the DTV Transition), the Consumer Division staff answered numerous inquiries and prepared packets of educational materials to be sent out to the public to consumers to prepare for the transition. The Department's website was updated with significant complaint trends, (examples include Cramming, Slamming, Spoofing, and Lifeline), to assist educate the public along with actions to protect against from being a victim of a scam, unauthorized charges or billing practices. Also, the Consumer Division fielded many calls from consumers requesting information or applications about Lifeline/Linkup program to obtain a discount on their landline or wireless telephone service.

Compile Statistics

The Consumer Division provides statistical information to the Department, industry related companies, government representatives, day and the media. The statistical complaint data compiled by the Consumer Division provides an important basis for determining whether fines should be levied against a company for failure to meet required service quality benchmarks. Statistical complaint data may also provide evidence of fraud or unfair trade practices, and if so this information would be shared with the state Attorney General's Office.

2009 Telecommunications and Cable Accomplishments:

- Responded to 31,394 telecommunications and cable contacts for the year;
- Investigated 3,142 telecommunication and cable complaints for the year;
- Authorized \$71,237 in telecommunications and cable consumer refunds;
- Conducted 1 telecommunications informal hearing;
- Advised the Department on important consumer issues;
- Approved various bill notices and billing inserts;
- Provided consumer education; and
- Compiled statistics for reporting and informational purposes.

2009 Energy Accomplishments:

- Responded to 12,303 energy-related contacts for the year;
- Investigated 3,086 energy related complaints for the year;
- Authorized \$159,072 in energy-related consumer refund;
- Conducted 7 energy-related informal hearings; and
- Provided training for utility customer service managers.

Note: The Consumer Division's contact numbers for the year include calls received that were transferred directly to companies through the Department's automated telephone software. Through this software, callers are directly transferred to a utility company or a telecommunications or cable provider of their choice simply by speaking the name of the company they wish to contact. In 2009, approximately 34,681 consumers were re-directed to the appropriate company for assistance.

Appendix A

Department Orders Issued in 2009

Docket Number	Title	Date Filed	Date Closed	Order Issued	Days
06-58	SBC TELECOM, INC. -- Appeal of SBC Long Distance, LLC d/b/a AT&T Long Distance from Denial of Motions for Protective Treatment.	6/27/2006	1/6/2009	12/17/2008	924
08-5	NextG Networks v. RCN -- NextG Networks complaint for denial of access to conduit by RCN.	9/9/2008	3/30/2009	3/5/2009	202
08-3	Choice One Communications v. Verizon New England -- Complaint of Choice One Communications of Massachusetts, Inc., Conversant Communications, CTC Communications Corp, and Lightship Telecom, Concerning the unlawful charges imposed by Verizon New England.	2/15/2008	4/29/2009	4/9/2009	439
08-9	Intrado Communications v. Verizon -- Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934	11/10/2008	6/1/2009	5/11/2009	203
08-7	Cordia Communications Petition for Designation as an Eligible Communications Carrier for the purposes of obtaining federal support for the provision of Lifeline and Link-Up Services.	10/6/2008	7/17/2009	N/A	284
08-12	Verizon -- Petition of Verizon New England Inc. for Amendment of The Cable Division's Form 500 "Cable Operator's Annual Report of Consumer Complaints"	8/22/2008	11/5/2009	10/16/2009	440
08-8	FCC Forms 1240 & 1205 for the Massachusetts community currently served by Cox Communications , and Subject to rate regulation	11/27/2008	11/14/2009	10/15/2009	352
08-6	FCC Forms 1240 & 1205 for the Massachusetts communities currently served by Comcast Cable Communications, LLC, and Subject to rate regulation	10/31/2008	11/19/2009	10/30/2009	384

Docket Number	Title	Date Filed	Date Closed	Order Issued	Days
07-9	Dept. Investigation -- Petition for investigation under Chapter 159, Section 14 of the Intrastate Access Rates Competitive Local Exchange Carriers	10/12/2007	12/27/2009	6/22/2009	807
08-13	E911 Petition -- Petition of the State 911 Department for approval of the release of Massachusetts Specialized Customer Premises Equipment Request for Response (State 911 09-004) pursuant to Section 15E (c) of Chapter 166 of the General Laws, as amended by Section 15 of Chapter 223 of the Acts of 2008.	2/12/2009	12/31/2009	N/A	322

Appendix B

2009 Consumer Division Statistics - Telecommunications and Cable

INDUSTRY	COMPANY	CASE	REFERRAL	REFUND
CABLE				
	CHARTER CABLE	96	69	2250.33
	COMCAST CORP.	957	3633	19358.38
	COX CABLE	5	8	0
	Other Cable		6	
	RCN Cable	210	435	5318.54
	SHREWSBURY CABLE	1	1	0
	TIME WARNER CABLE	19	51	271.56
		1288	4203	\$27,198.81
TELECOMMUNICATIONS				
	01 Communications of Massachusetts, LLC		1	
	ACN	6	16	\$145.19
	Adelphia Telecommunications		1	
	AIRNEX COMMUNICATIONS	1		\$15.98
	Alliance Group Services, Inc.	1		\$0.00
	American Business Alliance, Inc.		1	
	American Tel Corporation	1		\$0.00
	America's Tele-Network, Corp.		7	
	AT&T	155	188	\$3,938.21
	Bay Ring Communications		1	
	BROADVIEW NETWORKS	9	2	\$382.62

INDUSTRY	COMPANY	CASE	REFERRAL	REFUND
TELECOMMUNICATIONS				
	Business Network Long Distance	1		\$0.00
	Cavalier Telecom		1	
	CHARTEL (Charter Fiberlink Telecom)	7	5	\$0.00
	CHOICE ONE COMMUNICATIONS	1	1	\$0.00
	Clear Choice dba Comtel Telcom Assets	1		\$0.00
	Cleartel Telecommunications, Inc.	1		\$0.00
	Comcast Phone, LLC	49	92	\$2,003.14
	Consumer Telecom, Inc	1		\$22.92
	Conversent Communications of MA, LLC	2	1	\$0.00
	Cordia Communications Corp.	36	28	\$204.14
	Discount Network Services, Inc.		1	
	DSCI Corporation	1		\$0.00
	Enhanced Communications Group, LLC	1		\$0.00
	Enhanced Communications Network, Inc.	2	1	\$0.00
	Enhanced Services Billing, Inc.	11	2	\$177.99
	Evercom Systems, Inc.	3	2	\$20.00
	Excel/Vartec	1	1	\$0.00
	FCC	1	213	\$0.00
	FREEDOM RING COMMUNICATIONS LLC	1		\$0.00
	Global Crossing Telecom	2		\$0.00
	GlobCom, Inc		1	
	Granby Telephone Company	4	3	\$0.00
	IDT Corporation	7	10	\$0.00
	ILD - Evercom - Talton - Invision	8	2	\$286.64
	IMR Telecom		2	
	INTEGRETEL	1	1	

INDUSTRY	COMPANY	CASE	REFERRAL	REFUND
TELECOMMUNICATIONS				
	LDC Telecommunications	1		\$0.00
	Legent Communications Corp. dba/Long Distance America	1		\$4.49
	Level 3 Communications LLC	4		\$0.00
	Lifeline Communications	6	3	\$0.00
	Local Phone Company DBA Optimum Global Communications	3	1	\$0.00
	Long Distance Access	2		\$347.35
	Massachusetts Local Telephone Company, Inc.	1		\$0.00
	MCI-Agency Relations	8	3	\$378.86
	Metropolitan Telecommunications		2	\$0.00
	National Long Distance Service Inc.	2		\$0.00
	Net One		1	\$0.00
	NETWORK US, INC dba CA Affinity	1		\$0.00
	NEW HORIZON COMMUNICATIONS CORP	1		\$0.00
	Northstar	7	4	\$103.49
	One Communications	24	16	\$3,035.22
	One Link Communications	4		\$200.00
	One Touch Communications	1	2	\$61.91
	OPERATOR ASSISTANCE NETWK	13	5	\$305.29
	OTHER COCOTS	1	2	\$0.00
	OTHER TELEPHONE CO.	25	15	\$14.40
	PaeTec Communications, Inc.	1	1	\$0.00
	PowerNetGlobalCommunication	1	1	\$0.00
	Primo Communications		1	
	Primus Telecommunications, Inc.	9	14	\$0.00
	QCC		2	

INDUSTRY	COMPANY	CASE	REFERRAL	REFUND
TELECOMMUNICATIONS				
	Qwest Communications	1	1	\$0.00
	RCN Telephone	20	37	\$432.20
	Reduced Rate Long Distance, LLC	2		\$20.81
	Richmond Networx	1	2	\$0.00
	Richmond Telephone Company	1		\$0.00
	RNK, Inc.	1		\$0.00
	SafeLink by TracFone	185	54	\$0.00
	Silv Communications Inc.	6	1	\$350.91
	Spectrotel, Inc.	2		\$0.00
	SPRINT	6	3	\$0.00
	Startec Global Communications	2		\$198.90
	Sure Connection LD, Inc.	2		\$0.00
	SURFTONE	2		\$0.00
	Taconic Telephone Corp.	1	1	
	Teledias Communications, Inc.	2		\$0.00
	Teleuno, Inc.	7	1	\$0.00
	Trinsic Communications, Inc.	1		\$74.17
	TTI National, Inc.	1		\$1.51
	U. S. TELECOM LONG DISTANCE	1		
	UnionTelecom/Talk123	1		\$0.00
	United Systems Access Telecom, Inc	3		\$0.00
	USBI	17	2	\$210.04
	VarTec Telecom, Inc.	4	2	\$52.97
	VERIZON	1147	1885	\$30,795.75
	WORKING ASSETS LONG DISTANCE	1		\$0.00
	XO Communications, Inc.	3		\$0.00

INDUSTRY	COMPANY	CASE	REFERRAL	REFUND
TELECOMMUNICATIONS				
	Zero Plus Dialing	2		\$0.00
	ZEROPLUS aka ZPDI	1		\$253.83
	Z-Telephony LLC			\$0.00
		1854	2646	\$44,038.93
Grand Total		3142	6849	\$71,237.74

Appendix C

2009 Consumer Division Statistics – Energy Related

INDUSTRY	COMPANY	CASE	REFERRAL	REFUND
ELECTRIC				
	NANTUCKET ELECTRIC	2	1	\$0.00
	NATIONAL GRID(Massachusetts Electric)	752	1240	\$79,495.74
	NORTHEAST UTILITIES (Western Massachusetts Electric)	153	188	\$8,748.38
	NSTAR (Boston Edison)	479	612	\$23,795.20
	NSTAR(Cambridge Electric)	15	11	\$220.00
	NSTAR(Commonwealth Electric)	196	48	\$4,084.68
		1597	2100	\$116,344.00
MUNICIPAL ELECTRIC				
	ASHBURNHAM MUNICIPAL ELEC	1		\$0.00
	BELMONT MUNICIPAL ELEC	4	1	\$0.00
	BOYLSTON MUNICIPAL ELEC	1		\$0.00
	BRAINTREE MUNICIPAL LIGHT & CABLE	4		\$0.00
	CHICOPEE MUNICIPAL ELEC	9	6	\$0.00
	DANVERS MUNICIPAL ELEC	4	3	\$0.00
	GROVELAND MUNICIPAL ELEC	1		\$0.00
	HINGHAM MUNICIPAL ELEC	3		\$0.00
	HOLDEN MUNICIPAL ELEC	3		\$0.00
	HOLYOKE MUNICIPAL ELEC	2	1	\$0.00
	HUDSON MUNICIPAL ELEC	1	1	\$0.00
	HULL MUNICIPAL ELEC	1		\$0.00

INDUSTRY	COMPANY	CASE	REFERRAL	REFUND
MUNICIPAL ELECTRIC				
	IPSWICH MUNICIPAL ELEC	3	1	\$0.00
	MANSFIELD MUNICIPAL ELEC	3		\$0.00
	MARBLEHEAD MUNICIPAL ELEC		1	
	MERRIMAC MUNICIPAL ELEC	1		\$0.00
	MIDDLEBORO MUNICIPAL ELEC	8	2	\$0.00
	MIDDLETON MUNICIPAL ELEC	1		\$0.00
	N. ATTLEBOROUGH MUN ELEC	1		\$0.00
	NORWOOD MUNICIPAL LIGHT & CABLE	1	2	\$0.00
	PEABODY MUNICIPAL ELEC	3	2	\$0.00
	PRINCETON MUNICIPAL ELEC	4		\$0.00
	READING MUNICIPAL ELEC	4	2	\$0.00
	SHREWSBURY MUNICIPAL ELEC	1	3	\$0.00
	STERLING MUNICIPAL ELEC	1	1	\$0.00
	TAUNTON MUNICIPAL ELEC	27	7	\$0.00
	WAKEFIELD MUNICIPAL ELEC	1	1	\$0.00
	WELLESLEY MUNICIPAL ELEC	1		\$0.00
	WESTFIELD MUNICIPAL ELEC	4	8	\$0.00
		98	42	\$0.00
GAS				
	BERKSHIRE GAS	5	11	\$0.00
	BLACKSTONE GAS	1	2	\$0.00
	KEYSPAN (Boston Gas)	352	528	\$19,530.59
	KEYSPAN (Colonial Gas-Cape)	39	13	\$5,615.40
	KEYSPAN (Essex County Gas)	1		\$0.00
	KEYSPAN(Colonial Gas - Lowell)	22	18	\$1,092.75

INDUSTRY	COMPANY	CASE	REFERRAL	REFUND
GAS				
	NEW ENGLAND GAS (No. Attleboro Gas)	15	8	\$0.00
	NEW ENGLAND GAS(Fall River Gas)	62	17	\$2,188.94
	NISOURCE(BayStateGas)	192	164	\$5,368.68
	NSTAR(Commonwealth Gas)	108	44	\$2,335.91
	OTHER GAS CO.		2	\$0.00
	UNITIL(Fitchburg Gas & Electric)	537	49	\$2,654.66
		1334	856	\$38,786.93
MUNICIPAL GAS				
	HOLYOKE MUNICIPAL GAS	1	1	\$0.00
	MIDDLEBOROUGH MUN GAS		2	
	WAKEFIELD MUNICIPAL GAS	1	3	\$0.00
	WESTFIELD MUNICIPAL GAS	3	5	\$1,115.47
		5	11	\$1,115.47
SUPPLIER				
	Con Ed Solutions	3		\$49.02
	Constellation New Energy	3	1	\$0.00
	Direct Energy Services, LLC	5	6	\$0.00
	DOMINION RETAIL, INC.	12	124	\$1,029.14
	Glacial Energy of New England	1		\$0.00
	Horizon Light & Power	5	1	\$0.00
	MX Energy, Inc.	6	4	\$1,443.28
	Northeast Energy Partners	1		\$0.00
	NORTHEAST UTILS WHOLESALE		1	
	Patriot Energy Group			\$221.21
	Spark Energy, L.P.	1	1	\$83.02
	UNITIL RESOURCES, INC.	1	1	\$0.00
		38	139	\$2,825.67

INDUSTRY UNREGULATED MATTER	COMPANY	CASE	REFERRAL	REFUND
	Unregulated Matter	167	1125	\$2,047.63
	Unregulated industry	6	7	\$43.19
		173	1132	2,090.82
WATER				
	AQUA WATER COMPANY		6	
	Aquarion Water Company	8	1	\$0.00
	HOUSATONIC WATER WORKS	2	2	\$0.00
	MILFORD WATER COMPANY	1		
	NEW ENGLAND WATER HEATER -APPLIANCE CONTRACTS	1		\$0.00
	OTHER WATER CO.	1	10	
	WHITINSVILLE WATER CO	1		\$0.00
		14	19	\$0.00
Grand Total		3259	4299	\$161,162.89